



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER
(LIN-04-016-51762 relates)

Date: SEP 11 2004

IN RE:

Applicant:

[REDACTED]

APPLICATION: Application for Refugee Travel Document Pursuant to 8 C.F.R. § 223.1(b).

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Haiti, who seeks to obtain a refugee travel document pursuant to 8 C.F.R. 223.1(b). The Director denied the application after the applicant was unable to provide evidence to show that he was present in the United States at the time the Application for Travel Document (Form I-131) was filed. *See Director's Decision* dated May 18, 2004.

The regulation at 8 C.F.R. 223.2(b)(2)(i) states:

General. Except as otherwise provided in this section, an application may be approved if filed by a person who is in the United States at the time of application, and either holds valid refugee status under section 207 of the Act, valid asylum status under section 208 of the Act, or is a permanent resident and received such status as a direct result of his or her asylum or refugee status.

The regulation at 8 C.F.R. 103.2 states in pertinent part:

(b) Evidence and processing. (1) General. An applicant or petitioner must establish eligibility for a requested immigration benefit. An application or petition form must be completed as applicable and filed with any initial evidence required by regulation or by the instructions on the form. Any evidence submitted is considered part of the relating application or petition.

The record of proceeding reveals that the Form I-131 was filed on October 23, 2003. The record further reflects that on March 24, 2004, the Director requested that the applicant submits evidence in order to show that he was physically present in the United States at the time of the Form I-131 filing. The applicant submitted a full copy of a previously issued refugee travel document and a copy of an employee record from the internet. The Director did not accept the copy of the applicant's records and training history because they were not provided by the applicant's employer on company letterhead and signed by the employer.

On appeal, counsel submits copies of the applicant's previously issued refugee travel document and states that there was a typographical error on the Form I-131 showing the date of the applicant's intended departure as June 1, 2002. Counsel further states that this date was erroneously copied from the previous submitted Form I-131 and that the applicant is planning to depart on or about October 1, 2004.

The documentation submitted is not evidence that the applicant was present in the United States when he filed the Form I-131. The training history submitted indicates a "WEB" training on 10/9/03 and no further listing until 1/15/04. This does not show that he was in the United States on October 23, 2003 when the application was filed. Since the applicant did not provide evidence to show that he was physically present in the United States when he filed his application for a refugee travel document the application may not be approved.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that the applicant is eligible for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

The decision is without prejudice to the filing of a new Form I-131, if the applicant provides evidence of his presence in the United States at the time of the filing.

ORDER: The appeal is dismissed.